

EXHIBIT 181



experience does matter

**CASE: In re: Pharmaceutical Industry Average Wholesale Price
Litigation**

DATE: June 10, 2009

Enclosed is the Original of the transcript of the testimony of **Ann Maxwell** along with the errata sheet in the above-titled case. Please have the witness read the deposition and sign the signature page before a Notary Public.

After the signature page has been notarized, please return the original transcript and errata sheets to the custodial attorney within 30 days of receipt for proper filing.

Thank you for your attention to this matter and please feel free to contact us with any questions or concerns.

Sincerely,

Henderson Legal Services

Encl.

Henderson Legal Services
Phone: 202-220-4158
Fax: 202-220-4162
Website: www.hendersonlegalservices.com

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Chicago, IL

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UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

In Re: PHARMACEUTICAL)
INDUSTRY AVERAGE WHOLESALE) MDL No. 1456
PRICE LITIGATION) Civil Action No.
_____) 01-12257-PBS
THIS DOCUMENT RELATES TO:)
United States of America ex)
rel. Ven-a-Care of the)
Florida Keys, Inc., et al.)
v. Dey, Inc., et al.,)
Civil Action No. 05-11084-PBS)

(cross captions appear on following pages)

Videotaped 30(b)(6) deposition of the United States
through ANN MAXWELL
Chicago, Illinois
June 10, 2009
1:06 p.m.

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<p>1 IN THE DISTRICT COURT OF WYANDOTTE COUNTY, KANSAS 2 CIVIL COURT DEPARTMENT 3 In the Matter of:) 4 KANSAS MEDICAID PHARMACEUTICAL) MASTER DOCKET 5 AVERAGE WHOLESAL PRICE) NO. 08-MV-2190 6 LITIGATION) Division 7 7 _____) 8 This Document Relates to:) 9 All Cases) 10</p>	<p>1 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA 2 THIRD JUDICIAL DISTRICT AT ANCHORAGE 3 STATE OF ALASKA,) 4 Plaintiff,) Case No. 5 vs.) 3AN-06-12297 CI 6 ABBOTT LABORATORIES and) 7 DEY, INC.,) 8 Defendants.) 9 _____) 10</p>
<p>11 IN THE DISTRICT COURT OF WYANDOTTE COUNTY, KANSAS 12 CIVIL COURT DEPARTMENT 13 In the Matter of:) 14 KANSAS MEDICAID PHARMACEUTICAL) MASTER DOCKET 15 AVERAGE WHOLESAL PRICE) NO. 08-MV-0668 16 LITIGATION) Division 7 17 _____) 18 This Document Relates to:) 19 State of Kansas v. Abbott) 20 Laboratories Inc.,) 21 Case Number: 08-CV-2127) 22</p>	<p>11 IN THE DISTRICT COURT OF THE FOURTH 12 JUDICIAL DISTRICT OF THE STATE OF IDAHO 13 IN AND FOR COUNTY OF ADA 14 STATE OF IDAHO,) 15 Plaintiff,) Case No. 16 vs.) CV OC 0701846 17 ABBOTT LABORATORIES,) 18 Defendant.) 19 20 21 22</p>
Page 3	Page 5
<p>1 IN THE CHANCERY COURT OF RANKIN COUNTY, MISSISSIPPI 2 20TH CHANCERY COURT DIVISION 3 4 STATE OF MISSISSIPPI,) 5 Plaintiff,) Civil Action No. 6 vs.) G2009-65587 7 ABBOTT LABORATORIES, INC.,) 8 Defendant.) 9 _____) 10</p> <p>11 STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS 12 COUNTY OF RICHLAND FOR THE FIFTH JUDICIAL CIRCUIT 13 STATE OF SOUTH CAROLINA, and) 14 HENRY D. McMASTER, in his) 15 official capacity as Attorney) 16 General for the State of South) 17 Carolina,) Case No. 18 Plaintiff,) 2006-CP-40-4394 19 vs.) 20 ABBOTT LABORATORIES, INC.,) 21 Defendant.) 22 _____)</p>	<p>1 STATE OF NEW YORK 2 SUPREME COURT: COUNTY OF ERIE 3 _____) 4 In re Coordinated AWP Litigation) Index No. 2439/2005e 5) Index No. 4101/2009c 6 _____) Index No. 4449/2009e 7 8</p> <p>9 IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS 10 COUNTY DEPARTMENT, CHANCERY DIVISION 11 12 THE PEOPLE OF THE STATE OF ILLINOIS,) 13 Plaintiff,) 14 vs.) No. 05 CH 2474 15 ABBOTT LABORATORIES, INC., et al.) 16 Defendant.) 17 _____) 18</p> <p>19 The videotaped 30(b)(6) deposition of the 20 United States by ANN MAXWELL, called as a witness 21 for examination, taken pursuant to the Federal Rules 22 of Civil Procedure of the United States District</p>

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<p>1 Courts pertaining to the taking of depositions, 2 taken before KELLY M. FITZGERALD, a Certified 3 Shorthand Reporter of said state, at Suite 3600, 333 4 West Wacker Drive, Chicago, Illinois, on 10th day of 5 June, A.D. 2009, at 1:06 p.m. 6 7 8 APPEARANCES: 9 10 U.S. DEPARTMENT OF JUSTICE, by: 11 MS. LAURIE A. OBEREMBT 12 950 Pennsylvania Avenue, NW 13 Washington, DC 20530-0001 14 -and- 15 U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES 16 OFFICE OF INSPECTOR GENERAL, by: 17 MR. THOMAS W. BEIMERS 18 MS. MARY RIORDAN (Telephonically) 19 330 Independence Avenue, SW 20 Washington, D.C. 20201 21 appeared on behalf of the Plaintiffs; 22</p>	<p>1 APPEARED TELEPHONICALLY: 2 BEASLEY, ALLEN, CROW, METHVIN, PORTIS & 3 MILES, P.C., by: 4 MR. J. PAUL LYNN 5 218 Commerce Street 6 Montgomery, Alabama 36104 7 800-898-2034 8 appeared on behalf of the States of 9 Mississippi, South Carolina and Kansas; 10 11 PATTON BOGGS LLP, by: 12 MR. ED GEHRES 13 2550 M Street, NW 14 Washington, D.C. 20037 15 appeared On behalf of Sepracor, Inc. 16 in the Kansas AWP litigation. 17 18 ALSO PRESENT: 19 JOSHUA URBAN, Videographer. 20 21 REPORTED BY: KELLY M. FITZGERALD, CSR, RMR, CRR 22 CSR No. 84-4318.</p>
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<p>1 APPEARANCES: (Continued) 2 3 KELLEY DRYE & WARREN LLP, by: 4 MS. LISA R. KHANDHAR 5 101 Park Avenue 6 New York, New York 10178 7 212-808-5030 8 appeared on behalf of the Dey Defendants; 9 10 JONES DAY, by: 11 MS. TARA A. FUMERTON 12 77 West Wacker Drive 13 Chicago, Illinois 60601-1692 14 312-782-3939 15 appeared on behalf of Defendant 16 Abbott Laboratories; 17 18 19 20 21 22</p>	<p>1 I N D E X 2 WITNESS EXAMINATION 3 ANN MAXWELL 4 By Ms. Khandhar 12 5 6 7 E X H I B I T S 8 NUMBER MARKED FOR ID 9 Exhibit Dey Maxwell 001 39 10 notice of deposition 11 Exhibit Dey Maxwell 002 80 12 Prescription Drug Trends - 13 A Chartbook from the Kaiser 14 Family Foundation dated July 2000 15 16 17 18 19 20 21 22</p>

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<p>1 developing these recommendations other than the</p> <p>2 team that you had mentioned earlier?</p> <p>3 A. No.</p> <p>4 Q. And if you look on page 19, there's</p> <p>5 the beginning of outlining three options for</p> <p>6 approving estimated acquisition cost. And in</p> <p>7 particular, I would like to discuss option 3,</p> <p>8 which is on page 21.</p> <p>9 A. Mm-hmm.</p> <p>10 Q. And action 3 discusses specifically</p> <p>11 average manufacturer price data. And as we</p> <p>12 established earlier from the chart on page 7, the</p> <p>13 average manufacturer price is an actual selling</p> <p>14 price, correct?</p> <p>15 MS. OBEREMBT: Objection.</p> <p>16 BY THE WITNESS:</p> <p>17 A. Yeah, it's a price set in statute</p> <p>18 meant to represent transactions.</p> <p>19 BY MS. KHANDHAR:</p> <p>20 Q. I'm sorry. Meant to represent</p> <p>21 transactions?</p> <p>22 A. Transactions between -- I'll be</p>	<p>1 reflects actual transactions between drug</p> <p>2 manufacturers and commercial purchasers."</p> <p>3 And would you agree with this -- with</p> <p>4 this statement and -- actually -- strike that.</p> <p>5 Would you say that this statement</p> <p>6 generally agrees with what's on the chart on page</p> <p>7 7?</p> <p>8 A. Yes.</p> <p>9 Q. And do you know what the source would</p> <p>10 have been for the statement?</p> <p>11 A. The same sources we discussed for the</p> <p>12 chart.</p> <p>13 Q. Now, at the bottom of the page, it</p> <p>14 states, "Option 3: Share average manufacturer</p> <p>15 price data with states so that they can</p> <p>16 accurately set Medicaid reimbursement rates."</p> <p>17 And again, to -- to refresh what these</p> <p>18 options were, these are options for improving</p> <p>19 estimated acquisition costs, correct?</p> <p>20 A. They were options for improving</p> <p>21 estimated acquisition costs for the 16 HIV/AIDS</p> <p>22 drugs that we examined.</p>
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<p>1 specific. All right. We have the average</p> <p>2 manufacturer price is the average unit price paid</p> <p>3 the manufacturer for the drug by wholesalers.</p> <p>4 MS. KHANDHAR: This is actually a good</p> <p>5 time to stop and change the tape.</p> <p>6 MS. OBEREMBT: Okay.</p> <p>7 THE WITNESS: Okay.</p> <p>8 MS. KHANDHAR: Before I delve too far</p> <p>9 into this.</p> <p>10 THE WITNESS: Okay.</p> <p>11 THE VIDEOGRAPHER: Going off the record</p> <p>12 at 3:45 p.m. This is the end of tape 2.</p> <p>13 (WHEREUPON, a recess was had.)</p> <p>14 THE VIDEOGRAPHER: We are back on the</p> <p>15 record at 3:56 p.m. This is the beginning of</p> <p>16 tape 3.</p> <p>17 BY MS. KHANDHAR:</p> <p>18 Q. Before our break, we had discussed --</p> <p>19 we started to discuss the average manufacturer</p> <p>20 price. And if you look at page 21 at the top of</p> <p>21 the page, it states, "Unlike AWP, which is a</p> <p>22 suggested list price, AMP is a calculation that</p>	<p>1 Q. If you look at page 22. And this is</p> <p>2 going to be a long passage that I read here, but</p> <p>3 if you can read along with me, "Currently, CMS</p> <p>4 interprets the confidentiality clause very</p> <p>5 narrowly. This interpretation prevents CMS from</p> <p>6 sharing average manufacturer price data with</p> <p>7 State Medicaid agencies. The CMS reports only</p> <p>8 the unit rebate amounts to states, from which</p> <p>9 states cannot deduce AMP because of the complex</p> <p>10 unit rebate methodology. It would seem plausible,</p> <p>11 however, to interpret the confidentiality</p> <p>12 provision more broadly as a safeguard to prevent</p> <p>13 manufacturers from gaining access to the pricing</p> <p>14 information of their competitors. The</p> <p>15 legislation specifically prohibits the State</p> <p>16 Medicaid agencies from disclosing average</p> <p>17 manufacturer price and Best Price, which implies</p> <p>18 a legislative assumption that State Medicaid</p> <p>19 agencies would have access to that information."</p> <p>20 Did you draft this paragraph?</p> <p>21 A. I can't say whether I drafted it. I</p> <p>22 certainly reviewed it and approved it.</p>

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<p style="text-align: right;">Page 130</p> <p>1 Q. And do you recall evaluating this</p> <p>2 issue of whether State Medicaid agencies had</p> <p>3 access to average manufacturer prices?</p> <p>4 MS. OBEREMBT: Objection.</p> <p>5 BY THE WITNESS:</p> <p>6 A. I don't remember anything directly</p> <p>7 about this time.</p> <p>8 BY MS. KHANDHAR:</p> <p>9 Q. You -- you don't remember anything</p> <p>10 directly relating to this paragraph or at all?</p> <p>11 A. I don't have very many specific</p> <p>12 memories of the year 2000, you know, I mean,</p> <p>13 honestly. So in general, you know -- yeah, I'm</p> <p>14 sorry.</p> <p>15 Q. Does this paragraph reflect your</p> <p>16 understanding of -- of the access State Medicaid</p> <p>17 agencies have to average manufacturer prices?</p> <p>18 A. It -- yeah, it accurately reflects the</p> <p>19 -- our interpretation of the confidentiality</p> <p>20 provisions that are in -- or discusses the</p> <p>21 confidentiality provisions around AMP.</p> <p>22 Q. So I'm sorry. You say -- you would</p>	<p style="text-align: right;">Page 132</p> <p>1 anyone, either in your office or at CMS,</p> <p>2 regarding the ability of CMS to share AMP data</p> <p>3 with -- with the states?</p> <p>4 A. I don't recall any conversations.</p> <p>5 Q. Do you recall any other discussion</p> <p>6 other than conversations, perhaps e-mails or</p> <p>7 memos or reports?</p> <p>8 A. CMS does have the -- is given the</p> <p>9 opportunity to comment formally on the report,</p> <p>10 which they did so in this report and it is</p> <p>11 included in this report. And they voice -- they</p> <p>12 voice their interpretation of the confidentiality</p> <p>13 provision, which is that they are statutorily</p> <p>14 prohibited from sharing the information with</p> <p>15 states.</p> <p>16 Q. And do you agree with that</p> <p>17 interpretation?</p> <p>18 MS. OBEREMBT: Are you asking her in</p> <p>19 her individual capacity?</p> <p>20 MS. KHANDHAR: No.</p> <p>21 BY MS. KHANDHAR:</p> <p>22 Q. Does -- based on what's in this</p>
<p style="text-align: right;">Page 131</p> <p>1 say that this paragraph accurately discusses the</p> <p>2 confidentiality provisions surrounding AMP?</p> <p>3 A. Yes.</p> <p>4 Q. Do you recall any conversations at any</p> <p>5 time regarding the ability of CMS to share AMP</p> <p>6 data with states?</p> <p>7 A. Again, I don't recall specifically.</p> <p>8 But in our work papers, we do have logged a</p> <p>9 conversation with Mary Riordan of our office of</p> <p>10 general counsel discussing --</p> <p>11 MS. OBEREMBT: You know, I would</p> <p>12 caution you not to reveal communications with</p> <p>13 counsel.</p> <p>14 THE WITNESS: Okay.</p> <p>15 MS. OBEREMBT: So I don't think you can</p> <p>16 finish that answer.</p> <p>17 THE WITNESS: Okay. I will not finish</p> <p>18 that answer.</p> <p>19 BY MS. KHANDHAR:</p> <p>20 Q. Other than the conversation with your</p> <p>21 counsel regarding the ability of CMS to share AMP</p> <p>22 data, do you recall any other conversations with</p>	<p style="text-align: right;">Page 133</p> <p>1 report, does OIG agree with that interpretation?</p> <p>2 MS. OBEREMBT: Objection.</p> <p>3 BY THE WITNESS:</p> <p>4 A. In our agency comments on page 27, in</p> <p>5 response to CMS's interpretation, we put forth</p> <p>6 the possibility that the mandate implies a</p> <p>7 legislative assumption that those agencies, by</p> <p>8 that, it means the State Medicaid agencies, would</p> <p>9 have access to AMP information.</p> <p>10 BY MS. KHANDHAR:</p> <p>11 Q. Okay. And the beginning of that</p> <p>12 paragraph states, "Our interpretation of the</p> <p>13 confidentiality provision for AMP leads us to</p> <p>14 believe that CMS could legally share AMP with the</p> <p>15 State Medicaid programs," correct?</p> <p>16 A. That's what that sentence says,</p> <p>17 correct.</p> <p>18 Q. Now, earlier you mentioned that states</p> <p>19 have flexibility in determining estimated</p> <p>20 acquisition costs, correct?</p> <p>21 A. Within certain parameters, correct.</p> <p>22 Q. And does each state determine its own</p>

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